

commercial vessels, operators, and dealers.

A separate notice of scoping meetings for this amendment were published on March 3, 2005 (70 FR 10360), and March 18, 2005 (70 FR 13171).

#### Issues Identified for Discussion Under this Amendment

##### *The Possible Implementation of an Individual Fishing Quota System*

An individual fishing quota program (IFQ) is a form of output control that allocates harvesting privileges to individual fishermen. The MSFCMA defines an IFQ as "a Federal permit under a limited access system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person." One type of IFQ program is an individual transferable quota (ITQ) program. Under an ITQ program quota shares are able to be transferred between eligible allocation holders.

Under the current FMP, there are three fishing categories that the quota is divided among. There is an incidental, a part-time, and a full-time category for division of the quota. Under the Tilefish FMP, the "target" estimate of landings for the incidental category (5 percent of the TAL) is first deducted from the overall TAL, and then the remainder of the TAL is divided among the full-time tier 1 category, which receives 66 percent; the full-time tier 2 category, which receives 15 percent; and, the part-time category, which receives 19 percent. Trip limits are currently only imposed in the incidental permit category (open access) to achieve a "target" or soft quota.

The quota-based limited access program currently in place is based on group quota shares (quotas allocated to incidental, part-time, and full time vessels). However, an IFQ system could be considered for the three directed categories of tilefish fishing vessels. The Tilefish FMP states that "It is important to note that the current Mid-Atlantic Council's policy is that landings after 1998 will not assure future access to or an allocation of the tilefish resource. The purpose of this policy is to prevent a rush to fish on this overfished resource, in the hopes of obtaining a larger future allocation." Therefore, any IFQ alternative will likely be based on historical catches from logbook data from the time period between 1984 and 1998. One logical allocation of an IFQ system could be based on individual vessel catches over time,

however, other alternatives to this system may be proposed.

An IFQ system could be developed to include all directed categories (*i.e.*, full-time tier 1, full-time tier 2, and part-time) or it could be designed to include only 1 or 2 of the directed categories. However, it is possible that an IFQ system that includes all three directed categories would result in less of an administrative burden as there would be only one quota management program as opposed to 3 or 4 programs. Several alternatives can be used to divide the IFQ allocation among vessels within each directed category. For example, the following could be used to derive the IFQ allocation: (1) The IFQ allocation for a specific directed category could be divided among that category's participants equally; (2) the IFQ allocation could be based on historic landings (such as the best 3 or 5 years of landings over a 10-year period) and then divided among participants; (3) in deriving an IFQ allocation the historic landings employed to derive the original FMP allocation could be used; or, (4) in deriving an IFQ allocation weighted landings that would allocate a greater weight to more current landings could be used.

##### *Consideration of Possible New Methods to Collect Landings Information For the Commercial Fishery*

Collection of information issues have arisen since the implementation of the original FMP. More specifically, stakeholders have recommended that the Council assess measures to improve the collection of landings information.

The current FMP requires that "The owner or operator of any vessel issued a limited access permit for tilefish must submit a tilefish catch report via the Interactive Voice Response (IVR) system within 24 hours after returning to port and offloading as required by the Regional Administrator." According to industry members not all landings are reported within the 24 hour period as required under current regulations. Therefore, real-time data may not be available to manage the fishery. This practice could potentially allow a category to remain open when, in fact, it should be closed. Lastly, tilefish fishermen use paper logbooks to report fishing activity. Stakeholders and scientists have suggested that the paper logbooks are very generic and do not allow for the collection of detailed information that could better assess effort in the fishery. More detailed/relevant data could be collected that could be used to further refine the stock assessment for tilefish.

#### *Possible Recreational Management Measures*

The regulations allow for tilefish to be harvested by the recreational sector. When the FMP was first developed, the recreational participation in this fishery was very small. However, some Council members have indicated that they have seen an increase in recreational tilefish landings. There may be a need to assess how the recent increase in recreational landings can be accounted for in the FMP.

#### *Other Management Concerns*

A number of additional management concerns may also be considered in the development of Amendment 1 including: (1) Possible establishment of a required minimum hook size and/or hook configuration in the tilefish fishery; and, (2) methods to allow new entrants into the commercial fishery as the stock recovers.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: March 18, 2005.

**Alan D. Risenhoover,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 020205E]

#### **Small Takes of Marine Mammals Incidental to Specified Activities; Harbor Activities Related to the Delta IV/Evolved Expendable Launch Vehicle at Vandenberg Air Force Base, CA**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of receipt of application and proposed authorization for incidental harassment of marine mammals; request for comments.

**SUMMARY:** NMFS has received a request from The Boeing Company (Boeing) for a reauthorization to take small numbers of marine mammals by harassment incidental to harbor activities related to the Delta IV/Evolved Expendable Launch Vehicle (EELV) at south Vandenberg Air Force Base, CA (VAFB). Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize Boeing to take, by harassment, small numbers of several species of pinnipeds at south VAFB beginning in May 2005.

**DATES:** Comments and information must be received no later than April 22, 2005.

**ADDRESSES:** Comments on the application should be addressed to Steve Leathery, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225. The mailbox address for providing e-mail comments on this action is *PR1.020205E@noaa.gov*. Comments sent via e-mail, including attachments, must not exceed a 10-megabyte file size. Comments may also be submitted via facsimile at (301) 427-2521. A copy of the application containing a list of references used in this document may be obtained by writing to this address, by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) or online at: [http://www.nmfs.noaa.gov/prot\\_res/PR1/Small\\_Take/smalltake\\_info.htm#applications](http://www.nmfs.noaa.gov/prot_res/PR1/Small_Take/smalltake_info.htm#applications).

**FOR FURTHER INFORMATION CONTACT:** Jolie Harrison, (301) 713-2289, ext. 166 or Monica DeAngelis, (562) 980-3232.

**SUPPLEMENTARY INFORMATION:**

**Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission for incidental takings may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 as:

an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of

marine mammals by harassment. Except for certain categories of activities not pertinent here, the MMPA defines "harassment" as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild ("Level A harassment"); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering ("Level B harassment").

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

**Summary of Request**

On December 21, 2004, NMFS received an application from Boeing requesting an authorization for the harassment of small numbers of Pacific harbor seals (*Phoca vitulina richardsi*) and California sea lions (*Zalophus californianus*) incidental to harbor activities related to the Delta IV/EELV, including: transport vessel operations, cargo movement activities, harbor maintenance dredging, and kelp habitat mitigation operations. In addition, northern elephant seals (*Mirounga angustirostris*) may also be incidentally harassed but in even smaller numbers. Incidental Harassment Authorizations (IHAs) were issued to Boeing on May 15, 2002 (67 FR 36151, May 23, 2002), May 20, 2003 (68 FR 36540, June 18, 2003), and on May 20, 2004 (69 FR 29696, May 25, 2004) each for a 1-year period. The harbor where activities will take place is on south VAFB approximately 2.5 mi (4.02 km) south of Point Arguello, CA and approximately 1 mi (1.61 km) north of the nearest marine mammal pupping site (i.e., Rocky Point).

**Specified Activities**

*Delta Mariner* off-loading operations and associated cargo movements will occur a maximum of 3 times per year. The *Delta Mariner* is a 312-ft (95.1-m) long, 84-ft (25.6-m) wide steel hull ocean-going vessel capable of operating at a 8-ft (2.4-m) draft. For the first few visits to the south VAFB harbor, tug boats will accompany the *Delta Mariner*. Sources of noise from the *Delta Mariner* include ventilating propellers used for maneuvering into position and the cargo bay door when it becomes disengaged. Removal of the common booster core

(CBC) from the *Delta Mariner* requires use of an elevating platform transporter (EPT), an additional source of noise with sound levels measured at approximately 85 dB A-weighted (re 20 microPascals at 1-m) 20 ft (6.1 m) from the engine exhaust when the engine is running mid-speed (Acentech, 1998). Procedures require two short (approximately 1/3 second) beeps of the horn prior to starting the ignition. The sound level of the EPT horn ranged from 62-70 dB A-weighted at 200 ft (60.9 m) away, and 84-112 dB A-weighted at 25 ft (7.6 m) away. Containers containing flight hardware items will be towed off the *Delta Mariner* by a tractor tug that generates a sound level of approximately 87 dB A-weighted at 50 ft (15.2 m) while in operational mode. Total time of *Delta Mariner* docking and cargo movement activities is estimated at approximately between 14 and 18 hours in good weather.

To accommodate the *Delta Mariner*, the harbor will need to be dredged, removing approximately 3,000 to 5,000 cubic yards of sediment per dredging. Dredging will involve the use of heavy equipment, including a clamshell dredge, dredging crane, a small tug, dredging barge, dump trucks, and a skip loader. Measured sound levels from this equipment are roughly equivalent to those estimated for the wharf modification equipment: 43 to 81 dB A-weighted at 250 ft (76.2 m). Dredge operations, from set-up to tear-down, would continue 24-hours a day for 3 to 5 weeks. Sedimentation surveys have shown that initial dredging indicates that maintenance dredging should be required annually or twice per year, depending on the hardware delivery schedule.

A more detailed description of the work proposed for 2005 is contained in the application which is available upon request (see **ADDRESSES**) and in the Final US Air Force Environmental Assessment for Harbor Activities Associated with the Delta IV Program at Vandenberg Air Force Base (ENSR International, 2001).

**Habitat and Marine Mammals Affected by the Activity**

**Pacific Harbor Seals**

The marine mammal species likely to be harassed incidental to harbor activities at south VAFB are the Pacific harbor seal and the California sea lion. The most recent estimate of the Pacific harbor seal population in California is 27,863 seals. Since 1990 there has been no net population growth along the mainland or the Channel Islands. The decrease in population growth rate has

occurred at the same time as a decrease in human-caused mortality and may indicate that the population has reached its environmental carrying capacity (Carretta et al., 2004). The total population of harbor seals on VAFB is now estimated to be 1,099 (maximum of 515 seals hauled out at one time on south VAFB) based on sighting surveys and telemetry data (SRS Technologies, 2003).

The daily haul-out behavior of harbor seals along the south VAFB coastline is primarily dependent on time of day. The highest number of seals haul-out at south VAFB between 1100 through 1600 hours. In addition, haul-out behavior at all sites seems to be influenced by environmental factors such as high swell, tide height, and wind. The combination of all three may prevent seals from hauling out at most sites. The number of seals hauled out at any site can vary greatly from day to day based on environmental conditions. Harbor seals occasionally haul out at a beach 250 ft (76.2 m) west of the south VAFB harbor and on rocks outside the harbor breakwater where Boeing will be conducting Delta Mariner operations, cargo loading, dredging activities, and reef enhancement activities. The maximum number of seals present during the 2001 dredging of the harbor was 23 (averaging 7 per observation period) and the maximum number hauled out during the 2002 wharf modification activities was 43, averaging 21 per day when tidal conditions were favorable for hauling out. Dredging and reef enhancement did not occur in 2004. The harbor seal pupping site closest to south VAFB harbor is at Rocky Point, approximately 1 mi (1.6 km) north of the harbor.

Several factors affect the seasonal haul-out behavior of harbor seals including environmental conditions, reproduction, and molting. Harbor seal numbers at VAFB begin to increase in March during the pupping season (March to June) as females spend more time on shore nursing pups. The number of hauled-out seals is at its highest during the molt which occurs from May through July. During the molting season, tagged harbor seals at VAFB increased their time spent on shore by 22.4 percent; however, all seals continued to make daily trips to sea to forage. Molting harbor seals entering the water because of a disturbance are not adversely affected in their ability to molt and do not endure thermoregulatory stress. During pupping and molting season, harbor seals at the south VAFB sites expand into haul-out areas that are not used the rest of the year. The number of seals hauled out

begins to decrease in August after the molt is complete and reaches the lowest number in late fall and early winter.

#### California Sea Lions

During the wharf modification activity in June-July 2002, California sea lions were observed hauling out on the breakwater in small numbers (up to 6 individuals). Although this is considered to be an unusual occurrence and is possibly related to fish schooling in the area, Boeing included sea lions in their request.

California sea lions range from British Columbia to Mexico. The most recent population estimates for the California sea lions range from 237,000 to 244,000 individuals (Caretta et al., 2004). Between 1975 and 2001, the population growth rate was 5.4–6.1 percent. A 1985–1987 population survey indicated that most individuals on the Northern Channel Islands were on San Miguel Island, with the population ranging from 2,235 to over 17,000. The largest numbers of California sea lions in the VAFB vicinity occur at Lion Rock, 0.4 mi (0.64 km) southeast of Point Sal. This area is approximately 1.5 mi (2.41 km) north of the VAFB boundary. At least 100 sea lions can be observed during any season at this site. The Point Arguello beaches and the rocky ledges of South Rocky Point on south VAFB are haulout areas that may be used by California sea lions. In 2003, at least 145 sea lions were observed at Rocky Point, including five pups that did not survive due to abandonment shortly after birth. This was thought to be an El Nino effect, as there had never been any previously reported sea lion births at VAFB (Thorson, 2003).

Each year, small groups of sea lions have been observed heading south along the VAFB coastline in April and May (Tetra Tech, 1997). Starting in August, large groups of sea lions can be seen moving north, in groups varying in size from 25 to more than 300 (Roest, 1995). This concurs with established migration patterns (Reeves et al., 1992; Roest, 1995). Juvenile sea lions can be observed hauled-out with harbor seals along the South Base sites from July through September (Tetra Tech, 1997). Starving and exhausted subadult sea lions are fairly common on central California beaches during the months of July and August (Roest, 1995).

During the breeding season, most of California sea lions inhabit southern California and Mexico. Rookery sites in southern California are limited to San Miguel Island and to the southerly Channel Islands of San Nicolas, Santa Barbara, and San Clemente. Breeding season begins in mid-May, occurring

within 10 days of arrival at the rookeries. Molting occurs gradually over several months in the late summer and fall. Because the molt is not catastrophic, the sea lions can enter the water to feed.

Male California sea lions migrate annually. In the spring they migrate southward to breeding rookeries in the Channel Islands and Mexico, then migrate northward in the late summer following breeding season. Females appear to remain near the breeding rookeries. The greatest population on land occurs in September and October during the post-breeding dispersal and although many of the sea lions, particularly juveniles and sub-adult and adult males, may move north away from the Channel Islands.

#### Other Marine Mammals

Other marine mammal species are rare to infrequent along the south VAFB coast during certain times of the year and are unlikely to be harassed by Boeing's activities. These four species are: the northern elephant seal, the northern fur seal (*Callorhinus ursinus*), Guadalupe fur seal (*Arctocephalus townsendi*), and Steller sea lions (*Eumetopias jubatus*). Northern elephant seals may occur on VAFB but do not haul out in the harbor area. Northern fur seals, Guadalupe fur seals and Steller sea lions occur along the California coast and Northern Channel Islands but are not likely to be found on VAFB. Descriptions of the biology and local distribution of these species can be found in the application as well as other sources such as Stewart and Yochem (1994, 1984), Forney et al. (2000), Koski et al. (1998), Barlow et al. (1993), Stewart and DeLong (1995), and Lowry et al. (1992). NMFS Stock Assessments can be viewed at: [http://www.NMFS.noaa.gov/pr/PR2/Stock\\_Assessment\\_Program/sars.html](http://www.NMFS.noaa.gov/pr/PR2/Stock_Assessment_Program/sars.html). Please refer to those documents for information on these species.

#### Potential Effects of Activities on Marine Mammals

Acoustic and visual stimuli generated by the use of heavy equipment during the *Delta Mariner* off-loading operations, dredging, and kelp habitat mitigation, as well as the increased presence of personnel, may cause short-term disturbance to harbor seals and California sea lions hauled out along the beach and rocks in the vicinity of the south VAFB harbor. This disturbance from acoustic and visual stimuli is the principal means of marine mammal taking associated with these activities.

Based on the measured sounds of construction equipment, such as might be used during Boeing's activities, sound level intensity decreases proportional to the square root of the distance from the source. A dredging crane at the end of the dock producing 88 dBA of noise would be approximately 72 dBA at the nearest beach or the end of the breakwater, roughly 250 ft (76.2 m) away. The EPT produces approximately 85 dBA, measured less than 20 ft (6 m) from the engine exhaust, when the engine is running at mid speed. The EPT operation procedure requires two short beeps of the horn (approximately 1/3 of a second each) prior to starting the ignition. Sound level measurements for the horn ranged from 84 to 112 dBA at 25 ft (7.6 m) away and 62 to 70 dBA at 200 ft (61 m) away. The highest measurement was taken from the side of the vehicle where the horn is mounted. Ambient background noise measured approximately 250 ft (76.2 m) from the beach was estimated to be 35–48 dB A-weighted (Acentech, 1998; EPA, 1971).

Pinnipeds sometimes show startle reactions when exposed to sudden brief sounds. An acoustic stimulus with sudden onset (such as a sonic boom) may be analogous to a "looming" visual stimulus (Hayes and Saif, 1967), which may elicit flight away from the source (Berrens et al., 1988). The onset of operations by a loud sound source, such as the EPT during CBC off-loading procedures, may elicit such a reaction. In addition, the movements of cranes and dredges may represent a "looming" visual stimulus to seals hauled out in close proximity. Seals and sea lions exposed to such acoustic and visual stimuli may either exhibit a startle response and/or leave the haul-out site.

According to the MMPA, if harbor activities disrupt the behavioral patterns of harbor seals, these activities would take marine mammals by Level B harassment. In general, if the received level of the noise stimulus exceeds both the background (ambient) noise level and the auditory threshold of the animals, and especially if the stimulus is novel to them, there may be a behavioral response. The probability and degree of response will also depend on the season, the group composition of the pinnipeds, and the type of activity in which they are engaged. Minor and brief responses, such as short-duration startle or alert reactions, are not likely to constitute disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering (i.e., Level B harassment) and would not cause serious injury or mortality to marine mammals.

On the other hand, startle and alert reactions accompanied by large-scale movements, such as stampedes into the water, may rise to the level of Level B harassment and could result in injury of individuals. In addition, such large-scale movements by dense aggregations of marine mammals or on pupping sites could potentially lead to takes by serious injury or death. However, there is no potential for large-scale movements leading to serious injury or mortality near the south VAFB harbor, because on average the number of harbor seals hauled out near the site on average is less than 30 and there is no pupping at nearby sites. The effects of the harbor activities are expected to be limited to short-term startle responses and localized behavioral changes.

According to the June 2002 dock modification construction report (ENSRI, 2002), the maximum number of harbor seals hauled out each day ranged from 23 to 25 animals. There were 15 occasions in which construction noise, vehicle noise, or noise from a fishing boat caused the seals to lift their heads. Flushing only occurred due to fishing activities which were unrelated to the construction activities. The sea lions were less reactive to the construction noise than the harbor seals. None of the construction activities caused any of the sea lions to leave the jetty rocks and there was only one incident of a head alert reaction.

The report from the December 2002 dredging activities show that the number of Pacific harbor seals ranged from 0 to 19 and that California sea lions did not haul out during the monitoring period. On 10 occasions, harbor seals showed head alerts although two of the alerts were for disturbances that were not related to the project. No harbor seals flushed during the activities on the dock.

For a further discussion of the anticipated effects of the planned activities on harbor seals in the area, please refer to the application and ENSR International's 2001 Final Environmental Assessment. Information contained in the application and referenced sources as updated by recent monitoring reports is adopted by NMFS as the best information available on this subject.

#### **Numbers of Marine Mammals Expected to be Harassed**

Boeing estimates that a maximum of 43 harbor seals per day may be hauled out near the south VAFB harbor, with a daily average of 21 seals sighted when tidal conditions were favorable during previous dredging operations in the harbor. Considering the maximum and

average number of seals hauled out per day, assuming that the seals may be seen twice a day, and using a maximum total of 73 operating days in 2005–2006, NMFS estimates that a maximum of 767 to 1570 Pacific harbor seals may be subject to Level B harassment.

During wharf modification activities, a maximum of six California sea lions were seen hauling out in a single day. Based on the above-mentioned calculation, NMFS believes that a maximum of 219 California sea lions and 10 northern elephant seals (because they may be in nearby waters) may be subject to Level B harassment.

#### **Possible Effects of Activities on Marine Mammal Habitat**

Boeing anticipates no loss or modification to the habitat used by Pacific harbor seals or California sea lions that haul out near the south VAFB harbor. The harbor seal and sea lion haul-out sites near south VAFB harbor are not used as breeding, molting, or mating sites; therefore, it is not expected that the activities in the harbor will have any impact on the ability of Pacific harbor seals or California sea lions in the area to reproduce.

Boeing anticipates unavoidable kelp removal during dredging. This habitat modification will not affect the marine mammal habitat. However, Boeing will mitigate for the removal of kelp habitat by placing 150 tons of rocky substrate in a sandy area between the breakwater and the mooring dolphins to enhance an existing artificial reef. This type of mitigation was implemented by the Army Corps of Engineers following the 1984 and 1989 dredging. A lush kelp bed adjacent to the sandy area has developed from the efforts. The substrate will consist of approximately 150 sharp-faced boulders, each with a diameter of about 2 ft (0.61 m) and each weighing about one ton. The boulders will be brought in by truck from an off-site quarry and loaded by crane onto a small barge at the wharf. The barge is towed by a tugboat to a location along the mooring dolphins from which a small barge-mounted crane can place them into the sandy area. Boeing plans to perform the reef enhancement in conjunction with the next maintenance dredging event in order to minimize cost and disturbances to animals. Noise will be generated by the trucks delivering the boulders to the harbor and during the operation of unloading the boulders onto the barges and into the water.

## Possible Effects of Activities on Subsistence Needs

There are no subsistence uses for Pacific harbor seals in California waters, and thus, there are no anticipated effects on subsistence needs.

## Mitigation

To reduce the potential for disturbance from visual and acoustic stimuli associated with the activities Boeing will undertake the following marine mammal mitigating measures:

(1) If activities occur during nighttime hours, lighting will be turned on before dusk and left on the entire night to avoid startling harbor seals at night.

(2) Activities will be initiated before dusk.

(3) Construction noises must be kept constant (i.e., not interrupted by periods of quiet in excess of 30 minutes) while harbor seals are present.

(4) If activities cease for longer than 30 minutes and harbor seals are in the area, start-up of activities will include a gradual increase in noise levels.

(5) A NMFS-approved marine mammal observer will visually monitor the harbor seals on the beach adjacent to the harbor and on rocks for any flushing or other behaviors as a result of Boeing's activities (see Monitoring).

(6) The Delta Mariner and accompanying vessels will enter the harbor only when the tide is too high for harbor seals to haul-out on the rocks and the vessel will reduce speed 1.5 to 2 knots (1.5–2.0 nm/hr; 2.8–3.7 km/hr) once the vessel is within 3 mi (4.83 km) of the harbor. The vessel will enter the harbor stern first, approaching the wharf and mooring dolphins at less than 0.75 knot (1.4 km/hr).

(7) As alternate dredge methods are explored, the dredge contractor may introduce quieter techniques and equipment.

## Monitoring

As part of its 2002 application, Boeing provided a proposed monitoring plan for assessing impacts to harbor seals from the activities at south VAFB harbor and for determining when mitigation measures should be employed. NMFS proposes the same plan for this IHA.

A NMFS-approved and VAFB-designated biologically trained observer will monitor the area for pinnipeds during all harbor activities. During nighttime activities, the harbor area will be illuminated, and the monitor will use a night vision scope. Monitoring activities will consist of:

(1) Conducting baseline observation of pinnipeds in the project area prior to initiating project activities.

(2) Conducting and recording observations on pinnipeds in the vicinity of the harbor for the duration of the activity occurring when tides are low enough for pinnipeds to haul out (2 ft, 0.61 m, or less).

(3) Conducting post-construction observations of pinniped haul-outs in the project area to determine whether animals disturbed by the project activities return to the haul-out.

## Reporting

Boeing will notify NMFS 2 weeks prior to initiation of each activity. After each activity is completed, Boeing will provide a report to NMFS within 90 days. This report will provide dates and locations of specific activities, details of seal behavioral observations, and estimates of the amount and nature of all takes of seals by harassment or in other ways. In addition, the report will include information on the weather, the tidal state, the horizontal visibility, and the composition (species, gender, and age class) and locations of haul-out group(s). In the unanticipated event that any cases of pinniped injury or mortality are judged to result from these activities, this will be reported to NMFS immediately.

## Endangered Species Act

This action will not affect species listed under the Endangered Species Act (ESA) that are under the jurisdiction of NMFS. VAFB formally consulted with U.S. Fish and Wildlife Service (FWS) in 1998 on the possible take of southern sea otters during Boeing's harbor activities at south VAFB. A Biological Opinion was issued in August 2001. The activities covered by this IHA are analyzed in that Biological Opinion, and this IHA does not modify the action in a manner that was not previously analyzed.

## National Environmental Policy Act

The USAF prepared an Environmental Assessment (EA) for Harbor Activities Associated with the Delta IV Program at Vandenberg Air Force Base (ENSRI, 2001). In 2004, NMFS prepared an EA updating the information contained in the USAF EA and issued a Finding of No Significant Impact (FONSI) on the issuance of a new 5-year rule and LOAs (69 FR 5720, February 6, 2004). In accordance with section 6.01 of the National Oceanic and Atmospheric Administration Administrative Order (NAO) 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has preliminarily determined, based on the content and

analysis of Boeing's current request for an IHA and the 2004 EA and FONSI, that the proposed issuance of this IHA to Boeing by NMFS will not individually or cumulatively result in a significant impact on the quality of the human environment as defined in 40 CFR 1508.27. Impacts are not expected to be outside the scope of that EA. Therefore, this action is categorically excluded from further environmental review under NAO 216–6.

## Preliminary Conclusions

NMFS proposes to issue an IHA to Boeing for harbor activities related to the Delta IV/EELV to take place at south VAFB over a 1-year period. The proposal to issue this IHA is contingent upon adherence to the previously mentioned mitigation, monitoring, and reporting requirements. NMFS has preliminarily determined that the impact of harbor activities related to the Delta IV/EELV at VAFB, including: transport vessel operations, cargo movement activities, harbor maintenance dredging, and kelp habitat mitigation would result in the harassment of only small numbers of Pacific harbor seals, California sea lions, and northern elephant seals; would have no more negligible impact on these marine mammal stocks; and would not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence uses. Northern fur seals, Guadalupe fur seals, and Steller sea lions are unlikely to be found in the area and, therefore, will not be affected. While behavioral modifications may be made by harbor seals and California sea lions to avoid the resultant acoustic and visual stimuli, there is no potential for large-scale movements, such as stampedes, since these species haul out in such small numbers near the site (maximum number of harbor seals hauled out in one day estimated at 43 seals, averaging at 21 seals per day, maximum number of California sea lions hauled out in one day is estimated at six). The effects of Boeing's harbor activities are expected to be limited to short-term and localized behavioral changes.

Due to the localized nature of these activities, the number of marine mammals potentially taken by harassment are estimated to be small. In addition, no take by injury or death is anticipated, and the potential for temporary or permanent hearing impairment is unlikely given the low noise levels expected at the site. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine

mammals occur within or near south VAFB harbor.

#### Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**). Prior to submitting comments, NMFS recommends readers review NMFS' responses to those comments on this activity submitted previously (see 67 FR 63151, May 23, 2002, 68 FR 36540, June 18, 2003, and 69 FR 29696, May 25, 2004).

Dated: March 16, 2005.

**Michael Payne,**

*Division Chief, Marine Mammal and Turtle Conservation District, National Marine Fisheries Service.*

[FR Doc. 05-5753 Filed 3-22-05; 8:45 am]

**BILLING CODE 3510-22-S**

#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

[I.D. 031105F]

#### Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations; Public Hearings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public hearing.

**SUMMARY:** On March 14, 2005, NMFS announced its intent to hold 12 public hearings in Maine, Massachusetts, Rhode Island, New Jersey, Maryland, Virginia, North Carolina, and Florida in March and April 2005 for the purpose of answering questions and receiving public testimony on the Atlantic Large Whale Take Reduction Plan (ALWTRP) draft environmental impact statement (DEIS). NMFS will hold an additional public hearing in East Machias, Maine in April 2005.

**DATES:** See **SUPPLEMENTARY INFORMATION** under the heading "Hearing Dates, Times, and Locations" for the dates and locations of the public hearings.

**FOR FURTHER INFORMATION CONTACT:** Diane Borggaard, NMFS, Northeast Region, 978-281-9300 ext. 6503; Barb Zoodsma, NMFS, Southeast Region, 904-321-2806; or Kristy Long, NMFS, Office of Protected Resources, 301-713-2322.

**SUPPLEMENTARY INFORMATION:** On February 25, 2005, the Environmental Protection Agency (EPA) published a Notice of Availability in the **Federal**

**Register** announcing the availability of the DEIS for public review and comment. The DEIS is open for public comment from February 25, 2005 to April 26, 2005. The public has the opportunity to submit comments on the document by any one of the following methods:

(1) NMFS/Northeast Region Website: <http://www.nero.noaa.gov/nero/regsc/>. Follow the instructions on the website for submitting comments.

(2) E-mail:

[whaledeis.comments@noaa.gov](mailto:whaledeis.comments@noaa.gov).

(3) Mail: Mary Colligan, Assistant Regional Administrator for Protected Resources, NMFS, Northeast Region, 1 Blackburn Dr., Gloucester, MA 01930, ATTN: ALWTRP DEIS.

(4) Facsimile (fax) to: 978-281-9394, ATTN: ALWTRP DEIS.

(5) Public hearings: submit oral comments at one of the DEIS public hearings.

NMFS has scheduled another public hearing on the DEIS in addition to the 12 already announced (70 FR 12446, March 14, 2005). The purpose of these hearings is to provide an opportunity for the public to ask questions on the DEIS, as well as to submit formal oral testimony on the document during the comment period. Information on the public hearings can also be found on the Atlantic Large Whale Take Reduction Plan (ALWTRP) website at <http://www.nero.noaa.gov/whaletrp/>.

#### Hearing Dates, Times, and Locations

The date, time, and location of the hearing is as follows:

*Wednesday, April 6, 2005 - East Machias, ME - 6-9 p.m.—Washington Academy (Gardner Gym), One High Street, East Machias, ME 04630*

#### Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Diane Borggaard at 978-281-9300 ext. 6503 at least 7 working days prior to the hearing date.

Dated: March 17, 2005.

**Donna S. Weiting,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*  
[FR Doc. 05-5751 Filed 3-22-05; 8:45 am]

**BILLING CODE 3510-22-S**

#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

[I.D. 020905A]

#### Endangered Species; File No. 1449

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Issuance of permit.

**SUMMARY:** Notice is hereby given that Christine A. Tomichek, Kleinschmidt Associates, Kleinschmidt Building, 35 Pratt Street, Essex, Connecticut, 06426, has been issued a permit to take shortnose sturgeon (*Acipenser brevirostrum*) for purposes of scientific research.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713-2289; fax (301) 427-2521; and Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298; phone (978) 281-9200; fax (978) 281-9371.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Jefferies or Amy Sloan, (301)713-2289.

**SUPPLEMENTARY INFORMATION:** On August 18, 2004, notice was published in the **Federal Register** (69 FR 51267) that a request for a scientific research permit to take shortnose sturgeon had been submitted by the above-named individual. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 et seq.) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222-226).

Ms. Tomichek is authorized to conduct three projects. In the first project, 30 captively bred juvenile sturgeon will be externally radio tagged, released into the canal, tracked and recaptured after exiting the canal. In the second project, 50 adult sturgeon will be captured annually for four years via trawls and gillnets, measured, weighed, a subset of 20 PIT tagged and externally radio tagged, released and tracked. In the third project, 200 eggs and larvae will be captured via D-nets and preserved to evaluate spawning behavior. This permit is authorized for five years.